

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Smith, Gale E., *et al.*
Serial No. : 09/484,886
Filing Date : January 18, 2000
For : **IN VIVO ACTIVE ERYTHROPOIETIN PRODUCED IN
INSECT CELLS**
Examiner : Srivastava, Kailsah C.
Art Unit : 1657

745 Fifth Avenue, New York, New York 10151

FILED VIA EFS-WEB
ON August 9, 2010

TERMINAL DISCLAIMER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I, Thomas J. Kowalski, declare that I am an attorney of record and that I am authorized to execute terminal disclaimers on behalf of Protein Sciences Corp. ("PSC") pursuant to 37 C.F.R. § 1.321(b)(1)(iv) for the above-captioned application ("the present application") and U.S. Patent No. 6,103,526 ("the '526 patent");

That PSC is the assignee of the entire right to, title under, and interest in the '526 patent by virtue of the assignment as set out at Reel 009656 and Frame 0288, where said assignment was recorded at the U.S. Patent and Trademark Office on December 8, 1998;

That PSC is the assignee of the entire right, title, and interest of the present application by virtue of the assignment as set out at Reel 010727 and Frame 0046, where said assignment was recorded at the U.S. Patent and Trademark Office on April 21, 2000.

That PSC hereby disclaims the terminal part of any patent granted on the present application which would extend beyond the expiration date of the full statutory term of any patent granted on the '526 patent;

That PSC hereby agrees that any patent so granted on the present application shall be enforceable only for and during such period that said patent is commonly owned with the '526 patent, this agreement to run with any patent granted on the present application and to be binding upon the grantee, its successors or assignors;

That no terminal part of any patent granted on the present application is disclaimed prior to the full statutory term of the '526 patent, in the event that the '526 patent expires earlier for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or is terminally disclaimed under 37 C.F.R. § 1.321(a), has all claims cancelled by a reexamination certificate, or is otherwise terminated prior to expiration of its full statutory term, except for the separation of common ownership stated above;

That no terminal part of any patent granted on the present application is disclaimed in the event that no patent is granted on the present application;

In accordance with 37 C.F.R. § 3.73(b), the undersigned agent of record, empowered to sign this Statement on behalf of the assignee, states that PSC is the assignee of the entire right, title and interest of the patent application and patent identified above (the present application and the '526 patent) by virtue of the assignments identified above. The undersigned has reviewed documents in the chain of title of the patent application and patent identified above and, to the best of the undersigned's knowledge and belief, title is in the assignee identified above. The undersigned further states that the present application and '526 patent are commonly owned by PSC.

Entry and recordation of this Terminal Disclaimer is earnestly solicited. A fee of **\$70.00** for a small entity is believed to be due. The Commissioner is hereby authorized to charge any additional required fee for this paper, or to credit any overpayment in fees, to Deposit Account No. 50-0320.

It is also noted that this paper is being provided merely to expedite prosecution and is presented without admission, without prejudice, without surrender of subject matter, without any intention of creating any estoppel as to equivalents.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP

By:

A handwritten signature in black ink, appearing to read "Thomas J. Kowalski", written over a horizontal line.

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